

CLAIM AMENDMENTS

Claim Amendment Summary

Claims pending

- At time of the Action: Claims 1-35, 37-40, and 42-52.
- After this Response: Claims 7-9, 19-24, 27-29, and 55.

Canceled or Withdrawn claims: 1-6, 10-18, 25, 26, 30-54, and 56.

Amended claims: 7, 8, 9, and 19.

New claims: none.

Claims:

Claims 1-6 are CANCELED

7. (CURRENTLY AMENDED) ~~A method as recited in claim 1 further comprising~~ A method for measuring bandwidth between two entities on a communications network, the method comprising:

via a communications network, receiving at least a pair of non-compressible packets having measurable characteristics:

calculating bandwidth based upon, measurable characteristics of at least the pair of non-compressible packets:

determining if the calculated bandwidth is outside a given range of believability for calculated bandwidth:

1 if the calculated bandwidth is determined to be outside the given range of
2 believability, then querying a modem of an entity about a bandwidth setting of the
3 modem when result of calculating bandwidth is outside a given range of
4 believability.

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6 **8. (CURRENTLY AMENDED)** A method as recited in claim 1 claim 7,
7 wherein the queried modem is a modem of a receiving entity, further comprising
8 storing result of calculating bandwidth within a list of recent bandwidth
9 measurements.

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11 **9. (CURRENTLY AMENDED)** A method as recited in claim 1 claim 7,
12 wherein the queried modem is a modem of a sending entity, further comprising:
13 storing result of calculating bandwidth within a list of recent bandwidth
14 measurements;
15 finding a statistical derivation from such list, such derivation representing a
16 most likely actual bandwidth between the two entities.

17

18 **Claims 10-18 are CANCELED.**

1 **19. (CURRENTLY AMENDED)** A method for measuring bandwidth
2 between two entities on a dynamic network, the method comprising:

3 via a dynamic network, sending at least a pair of non-compressible packets,
4 the dynamic network being a communications network having no assurance that
5 both packets of a pair of identical packets are handled in an identical manner while
6 in transit on the communications network;

7 receiving a bandwidth calculation based upon measurements related to at
8 least the pair of non-compressible packets;

9 selecting a file formatted for a given bandwidth that is equal to or less than
10 the bandwidth calculation;

11 sending the selected file via the dynamic network.

12
13 **20. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
14 wherein each of the pair of non-compressible packets is approximately
15 fragmentation-avoidance size.

16
17 **21. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
18 wherein each of the pair of non-compressible packets is highly entropic.

19
20 **22. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
21 wherein each of the pair of non-compressible packets is formatted for TCP.

22
23 **23. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
24 wherein each of the pair of non-compressible packets is formatted for UDP.

1 **24. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
2 wherein the packets of the pair are equivalent in size.

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4 **25. (CANCELED)**

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6 **26. (CANCELED)**

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8 **27. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
9 before the sending, further comprising selecting one of the pair of non-
10 compressible packets from a set of differing non-compressible packets.

11

12 **28. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
13 before the sending, further comprising generating the pair of non-compressible
14 packets.

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16 **29. (ORIGINAL)** A computer-readable medium having computer-
17 executable instructions that, when executed by a computer, performs the method
18 as recited in claim 19.

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20 Claims 30-54 are **CANCELED**.

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22 **55. (NEW)** A method as recited in claim 19, wherein the dynamic
23 network is the Internet.

lee & hayes

Leo & Hayes PLLC, Intellectual Property Law
421 West Riverside, Suite 500, Spokane, WA 99201
509.324.9256 voice | 509.323.8979 fax | www.leehayes.com

1 **56. (CANCELED)**

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